HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No.559 OF 2007

Between:

Desiraju Venkata Ramana Babu

. . .Appellant

AND

The Assistant Commissioner of
Endowments, Guntur and others

. . .Respondents

:: JUDGMENT ::

Counsel for the appellant : Shri M.Vidyasagar

Counsel for the respondent No.1 : Assistant Government Pleader
for Endowments

28th August, 2007

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PER G.S.SINGHVI, CJ

This appeal is directed against order dated 26.02.2007 passed by the learned Single Judge whereby he dismissed the writ petition filed by the appellant against the appointment of respondent Nos.3 to 7 as Non-Hereditary Trustees of Sri Suvarchala Sametha Sri Anjaneya Swamy Temple, Bapatla Town, Guntur District (hereinafter referred to as 'the temple').

The appellant is a devotee of Sri Anjaneya Swamy and a regular visitor of the temple, which is a religious institution classified under Section 6 (c) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'the Act'). He also regularly makes donations to the temple on the occasion of festivals. He filed Writ Petition No.3606 of 2007 questioning the appointment of respondent Nos.3 to 7 as Non-Hereditary Trustees of the Trust Board of the temple on the ground that notice dated 13.10.2006 issued by the Assistant Commissioner of Endowments, Guntur (respondent No.1) was not in consonance with Rule 4 (1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Rules, 1987 (for short, 'the Rules'). According to the appellant, minimum 20 days notice is required to be given for making application for appointment as Non-Hereditary Trustee whereas respondent No.1 had issued only 15 days notice.

The learned Single Judge did notice the patent defect in the notice issued by the Commissioner, but declined to interfere only on the ground of delay of one month in filing the writ petition.

While issuing notice of the appeal on 09.07.2007, the Court had passed the following order:

> "Heard learned counsel for the appellant and perused the record.
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> This appeal is directed against order dated 26-2-2007 passed by the learned Single Judge, whereby he dismissed the writ petition filed by the appellant against the appointment of respondent Nos.3 to 7 as Non-Hereditary Trustees of Sri Suvarchala Sametha Sri Anjaneya Swamy Temple, Bapatla, Guntur District.
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> Prima facie, we are of the opinion that the order under challenge is liable to be set aside because the reason assigned by the learned Single Judge for dismissing the writ petition i.e. the appellant's failure to object against the notice issued by the Assistant Commissioner, Endowments is legally unsustainable. In our opinion, the procedure adopted by respondent No.1 for appointment of respondent Nos.3 to 7 is violative of Rule 4(1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Appointment of Trustees Rules, 1987.
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> Notice to the respondents to show cause as to why the writ appeal may not be admitted and finally disposed of along with the writ petition.
>
> Learned Government Pleader for Endowments accepts notice on behalf of respondent No.1. Shri V.T.M.Prasad accepts notice on behalf of respondent No.2.
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> In view of the above, notices be issued only to respondent Nos.3 to 7 for 6-8-2007.
>
> In the notice to be issued to respondent Nos.3 to 7, it should be clearly stated that they shall be free to file counter affidavits to the writ petition within four weeks from the date of receipt of notice.
>
> Personal service is permitted."

Notice of the appeal has been duly served on all the respondents, but none has appeared on behalf of respondent Nos.2 to 7.

We have heard learned counsel for the parties. Since it is not in dispute that notice was not issued as per the mandatory requirement of Rule 4(1) of the Rules, the appointment of respondent Nos.3 to 7 as

Non-Hereditary Trustees of the temple cannot but be treated as illegal. In **Dr. Arvind Kumar Ganeriwal v. The Deputy Commissioner of Endowments, Hyderabad**[1], this Court unequivocally ruled that appointment of Non-Hereditary Trustees made without issuing 20 days notice is legally unsustainable. It is quite surprising that even after taking note of this legal position, the learned Single Judge declined to quash the appointment of respondent Nos.3 to 7 on the ground of delay of one month. In our considered view, the short delay of one month was not fatal to the appellant's challenge to the appointment of respondent Nos.3 to 7 as Non-Hereditary Trustees, which, as mentioned above, was not preceded by notice as per the requirement of Rule 4(1) of the Rules.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside. Consequently, Writ Petition No.3606 of 2007 filed by the appellant shall stand allowed and the appointment of respondent Nos.3 to 7 as Non-Hereditary Trustees of the temple is quashed. However, it will be open to respondent No.1 to make fresh appointment of Non-Hereditary Trustees after complying with the mandate of the Act and the Rules, including Rule 4(1) of the Rules.

G.S.SINGHVI, CJ

28th August, 2007

C.V.NAGARJUNA REDDY, J

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[1] An unreported judgment dated 04.1.2006 in W.P.No.7070 of 2005